



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/161510

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 24, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on November 18, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly denied BadgerCare Plus (BC+) benefits to the petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Simone Johnson  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On July 24, 2014, the Petitioner applied for BC+ benefits.

3. Petitioner receives Social Security income of \$669/month. Petitioner had earned income of \$665/month based on pay statements submitted to the agency. Total gross monthly household income was \$1,334.
4. On July 25, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she was denied BC+ benefits due to household income over the program limit of \$972.50. The notice informed the Petitioner that she could appeal the agency determination by filing a request for a hearing by September 9, 2014.
5. On October 24, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by an agency concerning Medicaid, including BC+, must be filed within 45 days of the date of the action. Wis. Stats. § 49.45(5). A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed 60 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

Even if there was jurisdiction, the evidence demonstrates that the Petitioner was over the income limit at the time that she applied for benefits. At the hearing, the Petitioner testified that she was now earning less at her job. She was advised that she can re-apply and supply current pay statements.

### **CONCLUSIONS OF LAW**

The Petitioner's appeal was not timely.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in

this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 8th day of January, 2015

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 8, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability